IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1493 OF 2003

Shri Yogesh navindhandra Rai
(Kalal) & Anr. .. Petitioners

Vs.

Shri Uttam Ambadas Rai (Kalal)
& Anr. .. Respondents

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Shri P.S.Dani for the Petitioners.

Shri B.H.Mehta, APP for the Respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 24th JANUARY, 2005.

P.C.

. Heard. The Petitioners challenge the order issuing process against the Petitioners under Sections 499, 500, 468, 406 and 418 of the Indian Penal Code. The contention of the Petitioners is that the allegations in the complaint do not disclose defamation as such, and in any case, the statements stated to have been made by the Petitioners clearly do not warrant prosecution in view of the Exception No.8 to Section 499 of the Indian Penal Code. The Exception No.8 to Section 499 provides that it is not

defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation. Undoubtedly, the police which are entrusted with the job of investigation in relation to the criminal offences cannot be said to be the lawful authority over the Respondents in respect of the subject matter of accusation made by the Petitioners in their statements. Merely because the police are entrusted with the work of investigation, they do not assume role of lawful authority above the person in relation to whom the accusation is made. The power to investigate does not include the power to decide about rival contentions or to adjudicate the dispute. It merely empowers the police to forward the investigation papers to the Magistrate for necessary action in terms of the provisions of law. Considering the same and considering the nature of allegations in the statements by the Petitioners, the same prima facie do not disclose to have been covered by the Exception No.8 to Section 499 of the Indian Penal Code. Being so, there is no case for interference in the impugned order, at this stage, in exercise of writ jurisdiction under Article 227 of the Constitution of India. Needless to say that the observations made herein are only for the purpose of ascertaining

whether the order issuing process would require interference in writ jurisdiction and the Court below should not get influenced in any manner by these observations while dealing with the matter on merits. The petition therefore is rejected.